

SUMMARY

Evan Young applied to the Department of Marine Resources to expand his existing 2.37-acre standard aquaculture lease (BHB HI) by .58 acres.¹ The existing lease is located east of Hardwood Island, Blue Hill Bay, Hancock County, Town of Tremont. As depicted below, the proposed expansion would be adjacent to the north end of the existing lease. As indicated in the application, the additional .58 acres would only be used for moorings. DMR accepted the application as complete on March 26, 2018.

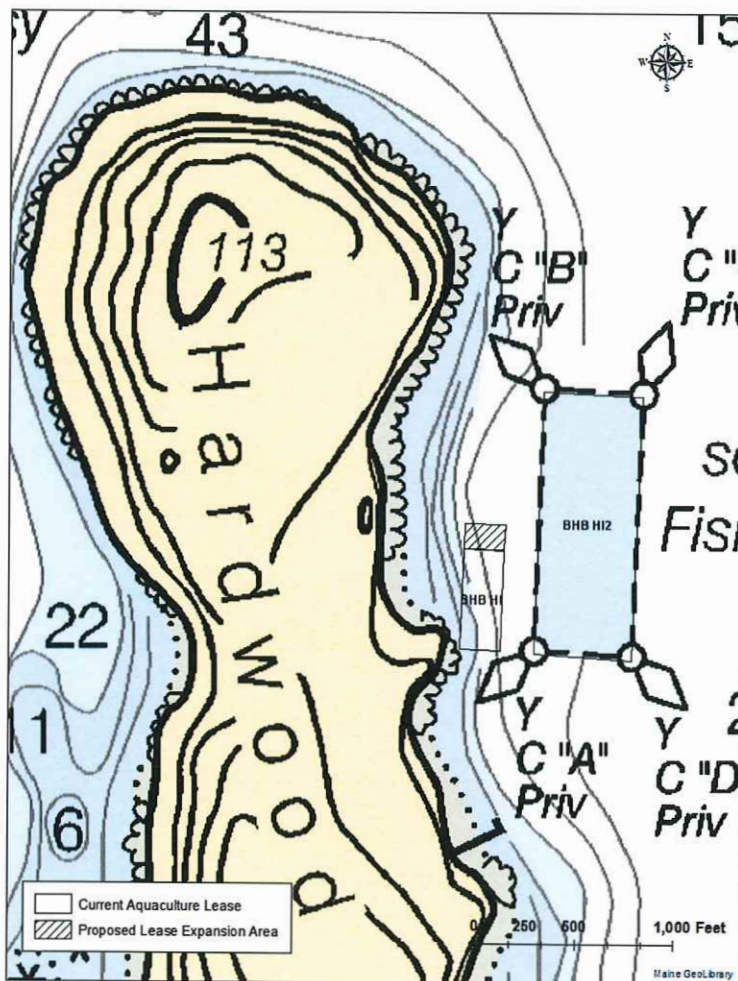


Figure 1: Existing lease BHB HI and the proposed expansion area. Note: BHB HI2 is held by a different aquaculturist and is discussed in section A(3) of this decision. The map was generated by Department staff.

¹ The applicant originally request .57 acres, but the Department calculated .58 acres.

PROCEEDINGS

The Department provided notice of the application and the 30-day public comment to the Town of Tremont and other state and federal agencies. The applicant notified riparian landowners of the proposal via certified mail. Notice of the application and comment period was published in the *Mount Desert Islander* on April 5, 2018. Provisions set forth in 12 M.R.S.A. §6072 (12-C) do not provide for an adjudicatory hearing, only for public comment. No comments from the public were received.

PROPOSED OPERATIONS

Evan Young currently operates BHB HI for the cultivation of blue mussels (*Mytilus edulis*) and sugar kelp (*Laminaria saccharina*) using suspended culture techniques. The lease was initially issued on July 25, 2005 and subsequently renewed on October 8, 2015. The Department has not received any complaints regarding the operation of BHB HI and Mr. Young has complied with applicable conditions and requirements governing the operation of BHB HI.² Mr. Young is requesting the additional acreage, so that he can place his moorings in a more secure location. On the existing site the moorings are on a slope, which causes them to shift during severe weather conditions. Per the application, the bottom of the proposed expansion area is less steep, so the moorings would be less likely to shift during instances of severe weather. The expansion would not be used for production and no gear, except for moorings and required marker buoys would be placed on the proposed site. The aquaculture activities do not involve the discharge of any pollutants into the waters of the State. The proposed site is in an area that is classified as "open/approved."

FINDINGS, CONCLUSIONS OF LAW, & DECISION on AQUACULTURE LEASE EXPANSION

Pursuant to 12 M.R.S.A § 6072 (12-C)(E), a lease expansion may be granted by the Commissioner upon determining that it would satisfy the criteria set forth in 12 M.R.S.A. §6072 (7-A). Pursuant to these criteria, 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; with navigation; with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with 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

² Mr. Young also has an interest in BHB SP, held by Tighrope Seafarms, LLC. BHB SP is .93 acres and located in the Blue Hill Salt Pond.

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. The following discussion, findings, and conclusions are based on the Department's consideration of the information contained in the application, as well as other information relevant to the decision criteria.

A. FINDINGS

1. Riparian Access: There is one riparian landowner within 1,000 feet of the proposed expansion who was notified of the application and comment period. The Department did not receive any comments from the riparian landowner. The application notes that the riparian landowner does not use the proposed expansion area to access their property. The Harbormaster indicated that the proposed expansion would not affect riparian ingress and egress. Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with riparian ingress and egress.

2. Navigation: The Harbormaster indicated that the proposal is not within any designated channels, and there are no permitted moorings within the boundaries of the proposed area. The proposed area will contain no gear except moorings and required marker buoys. Based on this evidence, it is unlikely the proposed expansion will unreasonably interfere with navigation in the area.

3. Fishing and other water related uses: Per the application, lobster and crab fishing occurs intermittently to the west of the proposed expansion area. Recreational boating occurs infrequently near the area, but not within the boundaries of the proposed expansion. The Department did not receive any comments regarding fishing or other water-related uses of the area. The applicant is not requesting exclusive use of the area and notes that activities such as boating, and recreational and commercial fishing would be permitted within the proposed expansion. **Other Aquaculture Leases:** Mussel Bound Incorporated operates a standard lease, BHB HI2, ~177 feet from the eastern boundary of the proposed expansion. The Department did not receive any comments from Mussel Bound Incorporated regarding this application. Based on this evidence, it is unlikely the proposed expansion will interfere with fishing or other uses of the area.

4. Flora and Fauna: The applicant has observed rock crabs (*Cancer irroratus*), green crabs (*Carcinus maenas*), and Jonah crabs (*Cancer borealis*), within the boundaries of the proposed site. The Department sent a copy of the application to the Maine Department of Inland Fisheries and Wildlife (MDIFW) for their review. MDIFW indicated that "minimal impacts to

wildlife are anticipated.” Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

5. Public Use: There are no public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government within 1,000 feet of the proposed expansion. Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government.

6. Source of Organisms: The applicant will not cultivate any species on the proposed expansion. The additional acreage will only be used for moorings.

7. Light: The application indicates that no lights will be used at the proposed site. Therefore, the lease expansion will not result in an unreasonable impact from lights at the boundaries of the proposed area.

8. Noise: There is no equipment, except for moorings and required marker buoys proposed for the expanded area. Therefore, the lease expansion will not result in an unreasonable impact from noise at the boundaries of the proposed area.

9. Visual Impact: Except for required marker buoys, and proposed moorings no gear is proposed for this site. Therefore, the proposed expansion complies with the Department’s visual impact criteria set forth in Chapter 2.37(1)(A)(10).

10. Marking: The applicant has agreed to mark the site as specified by DMR Rule 2.80 and applicable U.S. Coast Guard requirements.

11. Conditions: The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Since the expanded area will be combined with the existing lease, all conditions associated with BHB HI shall apply to the expanded area. The existing conditions are as follows:

1. The lease area shall be marked in accordance with U.S. Coast Guard requirements and Department of Marine Resources Regulations Chapter 2.80;
2. Navigation, lobster fishing, recreational fishing and boating shall be allowed on the lease.

In addition to the existing conditions, the Department will include the following condition which will only apply to the expanded area:

3. Except for moorings and required marker buoys no other gear will be permitted in the expanded area.

B. CONCLUSIONS OF LAW

Based on the above, I conclude that:

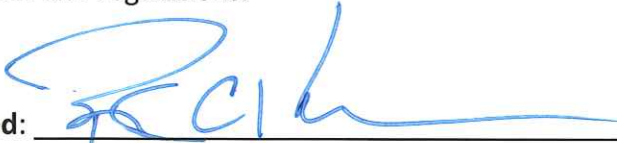
- a. The aquaculture activities proposed for this expansion will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this expansion will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this expansion will not unreasonably interfere with fishing or other uses of the area, taking into consideration other aquaculture leases in the area.
- d. The aquaculture activities proposed for this expansion will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this expansion will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments.
- f. The applicant is not cultivating any species on the proposed expansion.
- g. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from light at the boundaries of the expanded area.
- h. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from noise at the boundaries of the expanded area.
- i. The aquaculture activities proposed for this expansion will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the application and other information supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease expansion as specified in 12 M.R.S.A §6072 (12-C).

DECISION

Based on the foregoing, the Commissioner grants the requested lease expansion of .58 acres to Evan Young. The expanded area will be combined with the existing lease BHB HI, which

will expire on July 23, 2025. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account that reflects the expanded acreage pursuant to DMR Rule 2.40 (2)(A), conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Signed:  Date: 6/19/18
Patrick C. Keliher, Commissioner
Maine Department of Marine Resources

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

Renewal Application

Suspended culture of blue sea mussels
and sugar kelp

East of Hardwood Island, Blue Hill Bay, Tremont

Lessee: Evan Young

Lease: BHB HI

Docket # 2015-06-R

October 8, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Evan Young has applied to the Department of Marine Resources (“DMR”) for renewal of his aquaculture lease BHB HI located on 2.3 acres in the coastal waters of the State of Maine, east of Hardwood Island, Blue Hill Bay, Tremont, Hancock County, for the purpose of cultivating blue sea mussels (*Mytilus edulis*) and sugar kelp (*Laminaria saccharina*) using suspended culture techniques.

This lease was initially issued on July 25, 2005.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Penobscot Bay Press* on May 14 and June 11, 2015 and in the June issue of the *Commercial Fisheries News*. 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. One comment in favor of the renewal of the lease was received by the DMR during the comment period. No requests for a hearing on this application were received by the Department.

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

My review of the records of this lease discloses that all annual reports have been filed, rent and bond are 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 Interests of the State

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 the applicant holds 19.75 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 and by the statement of the lessee on the renewal application.

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

3. LEASE CONDITIONS

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

1. The lease area shall be marked in accordance with U.S. Coast Guard requirements and Department of Marine Resources regulations Chapter 2.80; and

2. Navigation, lobster fishing, recreational fishing and boating shall be allowed on the lease.

4. **DECISION**

The Commissioner of Marine Resources grants the application of Evan Young to renew his aquaculture lease BHB HI for a period of ten years, to July 24, 2015. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: _____

10/8/15



Patrick C. Keliher
Commissioner
Department of Marine Resources