

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Coastal Rivers Conservation
Trust

Experimental Aquaculture Lease Renewal
Suspended Culture of Shellfish
Damariscotta River, Damariscotta, Lincoln County

DAM BP

Findings of Fact, Conclusions of Law, and Decision

Coastal Rivers Conservation Trust applied to the Department of Marine Resources (DMR) to renew the experimental aquaculture lease DAM BP for a period of three years¹. The 0.06-acre lease is located in the Damariscotta River, Town of Damariscotta, Lincoln County and is for the suspended culture of American oysters (*Crassostrea virginica*), softshell clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*).

1. Proceedings

DMR deemed the renewal application complete on September 13, 2024. Notice of the 30-day public comment period and opportunity to request a public hearing was published in the *Lincoln County News* on October 3, 2024. Notice was also provided to the Town of Damariscotta, riparian landowners within 1,000 feet of the site, and other state agencies, and sent to subscribers of DMR's aquaculture email list-serve. DMR sent a Harbormaster Questionnaire to the Town of Damariscotta, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations and received a response from the Harbormaster on October 15, 2024. The record closed on November 2, 2024. During the comment period, one comment was received from the Maine Department of Inland Fisheries & Wildlife (IFW).

In accordance with 12 M.R.S.A. § 6072-A(18), a public hearing on a lease renewal is at DMR's discretion unless ten or more requests for a public hearing are received during the comment

¹ 12 M.R.S.A. § 6072-A(18-A) allows for the renewal of a limited-purpose lease for scientific research.

period.² DMR did not receive any requests for a public hearing. DMR elected not to hold a public hearing on the renewal request.

2. Site History

DAM BP was defined in the original decision as a limited-purpose lease for scientific research and granted to the Damariscotta River Association³ for a term starting June 1, 2012 and expiring May 31, 2015. The lease was renewed with a term starting June 1, 2015 and expiring May 31, 2018, renewed again June 1, 2018, expiring May 31, 2021, and renewed again June 1, 2021, expiring May 31, 2024.

3. Statutory Criteria

Aquaculture lease renewals are governed by 12 M.R.S.A. §6072-A(18-A)⁴ rules, which provide that an aquaculture lease shall be renewed if: the commissioner receives, prior to or within 30 days after the expiration of a lease, an application for renewal that includes information on the type of aquaculture to be conducted during the new lease term; 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 research has been conducted during the term of the lease.

A. Date Application was Received

When issuing a decision on a lease renewal the Commissioner must consider whether the application for renewal was received prior to the expiration of the lease or within 30 days after the

² On June 20, 2025, LD 1722 was enacted. LD 1722, which applies to all pending renewal applications repealed 12 M.R.S.A. § 6072-A(18) and enacted § 6072-A(18-A), so that, among other changes, scientific lease renewals are no longer adjudicatory proceedings, meaning public hearings are not required for lease renewals. The notice provided for this application complies with the notice procedures provided for in LD 1722.

³ The original lease decision for DAM BP lists Damariscotta River Association as the lease holder. Following a merger operation, the Damariscotta River Association became Coastal Rivers Conservation Trust which is identified as the lease holder of DAM BP in the renewal decision dated March 28, 2022.

⁴ LD 1722 also changed the timing of renewal application submissions from 30 days before the lease expired to requiring the renewal application be received on or before the date of lease expiration or within 30 days of the lease expiring with a \$500 late fee. LD1722 applied to all renewal applications pending with the Department on the effective date of June 20, 2025 and all renewal applications submitted following the effective date. This application was pending at the time the statutory change was made.

expiration of the lease with an assessed late fee of \$500, and that the application includes information on the type of aquaculture to be conducted during the new lease term. 12 M.R.S.A. §6072-A(18-A)(A).

DAM BP was set to expire on May 31, 2024. DMR received the application for renewal of DAM BP on May 2, 2024. The renewal application was incomplete and a request for more information was made by DMR to the applicant on July 23, 2024. A revised application was submitted to DMR on July 30, 2024, and the application was deemed complete on September 13, 2024.

The renewal application was received 29 days before the expiration of the lease, which is within the submission timeframes specified in statute.

Therefore, DMR finds that the commissioner received the application for renewal prior to the expiration of the lease, and that the application includes information on the type of aquaculture to be conducted during the new lease term.

B. Compliance with Lease Agreement

When issuing a decision on a lease renewal the Commissioner must consider whether the lessee has complied with the lease agreement during the term of the lease. The Department shall consider the compliance record of the leaseholder. 12 M.R.S.A. § 6072-A(18-A)(B).

There are no documented violations of the lease agreement over the prior term.

The original decision for DAM BP includes approval for American oysters (*Crassostrea virginica*), softshell clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*). The source of stock is listed as Muscongus Bay Aquaculture, Pemaquid Oyster Company and Downeast Institute.⁵ The lease renewal application states that only American oysters (*Crassostrea virginica*) will be grown on the site and the sources are Muscongus Bay Aquaculture, Pemaquid Oyster Company and Mook Sea Farm. Muscongus Bay Aquaculture and Mook Sea Farm are both hatcheries for American oysters (*Crassostrea virginica*) on the DMR approved source list. Pemaquid Oyster Company holds leases in the Damariscotta River. The Damariscotta River is a restricted area where movement of American oysters (*Crassostrea virginica*) over three

⁵ Original signed lease decision for DAM BP, page 7

millimeters outside of the Damariscotta River is prohibited. Chapter 24.10(4)(F)(1). DAM BP is also within the Damariscotta River; therefore Pemaquid Oyster Company is an approved source.

The renewal application states that only American oysters (*Crassostrea virginica*) will be cultivated on DAM BP. Therefore, softshell clams (*Mya arenaria*) and northern/hard clams or quahogs (*Mercenaria mercenaria*) are removed as authorized species for DAM BP. If the lease holder wishes to cultivate softshell clams (*Mya arenaria*) and northern/hard clams or quahogs (*Mercenaria mercenaria*) in the future, they would need to apply for a species amendment demonstrating that they have an available source of stock.

Therefore, DMR finds that the applicant has complied with the lease agreement during its term.

C. Best Interest of the State of Maine

When issuing a decision on a lease renewal the Commissioner must determine whether renewal of the lease is in the best interest of the State. 12 M.R.S.A. § 6072-A(18-A)(C).

On October 28, 2024, DMR received a comment from IFW stating that minimal impacts to wildlife are anticipated.⁶ DMR did not receive any other comments specific to this renewal criterion. Based on the record, there is no evidence of conflicts with new or existing uses of the area.

Therefore, DMR finds that it is in the best interests of the State of Maine to renew this lease.

D. Aggregate Lease Holdings

The Commissioner may not issue a lease renewal if the renewal will cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres. 12 M.R.S.A. §6072-A(18-A)(D).

According to DMR records, Coastal Rivers Conservation Trust holds the following leases:

⁶ Email from E. Robinson (IFW) to DMR Aquaculture dated October 28, 2024.

Lease Acronym	Acreage
DAM BP	0.06

The total acreage leased by Coastal Rivers Conservation Trust if this renewal is approved would be 0.06 acres.

Therefore, DMR finds that the renewal of this lease will not cause the lessee to lease more than 1,000 acres.

E. Research

The Commissioner may not issue a lease renewal if research was not conducted during the term of the lease. 12 M.R.S.A. §6072-A(18-A)(E).

The renewal application states that the site is used for educational purposes and a field trial for growing oysters by means of a less common method, suspended from fixed tables in the near-shore area⁷. The adult educational activities which utilize the lease area are described as the “Oyster Garden Program”. As an educational program, the site is accessible by the Coastal Rivers Conservation Trust and is used as a teaching tool for members and guests, including groups of children and students who are not part of the Oyster Garden Program. The site is used to teach material related to water quality, food production, and multiple use and management of natural resources. Ten adult students every two years are involved in the Oyster Garden Program. These students are provided with 250 oyster seed at 15mm size. The gear is tended from March 1 through December 30 annually. During the last lease term, between 4,000-6,000 oysters were on the site at any given time.

Based on the record, the lessee has conducted research in the lease area during the previous term.

Therefore, DMR finds that the lease is being used for research purposes.

4. Conclusions of Law

Based on the above findings, DMR concludes that:

⁷ Pages 1 and 2 of the final lease renewal application.

- A. The commissioner received the application for renewal prior to the expiration of the lease, and that the application includes information on the type of aquaculture to be conducted during the new lease term.
- B. The lessee has complied with the lease agreement during the term of the lease.
- C. The renewal of the lease is in the best interest of the State.
- D. The renewal of the lease will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres.
- E. Research has been conducted during the term of the lease.

Accordingly, the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of a renewal of an aquaculture lease set forth in 12 M.R.S.A. §6072-A(18-A).

5. Lease Conditions

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A. § 6072-A(15). Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. The following conditions were part of the lease renewal effective June 1, 2021:

- 1. Shellfish harvesting is prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Dragging is prohibited within the lease boundaries.
- 2. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than eight people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site.
- 3. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff to determine compliance with these lease conditions.

4. The lessee must post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters in order to prevent the spread of disease.
5. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

Condition 1 prohibits dragging and shellfish harvesting within the boundaries of the lease area, which governs the use of the site by individuals who are not a party to this lease. Title 12 M.R.S.A. § 6073(2) states that it shall be unlawful to interfere with the rights provided in a lease. Therefore, the statute already addresses this issue and condition 1 is removed.

Conditions 2 and 3 were implemented in the original lease decision to reduce bottom disturbance and potential negative impacts of turbidity on oysters and eelgrass (*Zostera marina*). During the site visit on October, 2011⁸ DMR scientists observed no eelgrass within the lease site boundaries but documented approximately 15% coverage of eelgrass in an area 75 feet from the shoreline. A DMR database from 2010 was also referenced regarding eelgrass historically occurring approximately 400 feet from the lease site. A more recent dataset collected by the Department of Environmental Protection (DEP) in 2023 shows a 10-40% coverage of eelgrass encroaching on the eastern boundary of the lease site and extending approximately 75 feet toward the shore⁹. Condition 3 was based on the site report which stated “Maintain an activity log with sign-in/sign-out component for farm activities that would be available to DMR staff for inspection *should concerns about bottom disturbance arise.*” [emphasis added]¹⁰. Eelgrass has expanded into the eastern boundary of the lease site and an area of 10-40% coverage was documented in 2023. No concern arose over the most recent term of the lease requiring DMR to inspect the activity logs as eelgrass made a documented recovery in the eastern portion of the lease and immediately adjacent to the lease. Therefore, conditions 2 and 3 will be combined into a single condition (Condition 1) to address minimizing bottom disturbance to benefit eelgrass.

Condition 4 is a regulatory requirement in Chapter 24.10(4)(F). The original decision states that: “It is vital that the DRA ensure that anyone taking oysters from the proposed lease site be

⁸ Original signed lease decision for DAM BP, page 5

⁹ DEP Seagrass 2023 (Phippsburg to Port Clyde) GIS layer accessed through the Maine DMR Aquaculture Map: <https://maine.maps.arcgis.com/apps/webappviewer/index.html?id=b846cf37b1d64c988f89eafa085c8b7a>

¹⁰ Original signed lease decision for DAM BP, page 6

made aware of this restriction and the potential consequences of disregarding it, which include the risk of spreading disease to areas that are not now affected.” The Oyster Garden Program is educational and scientific by design and requires students to learn about biosecurity¹¹. Therefore, regulation already addresses the prohibition on movement of American oysters (*Crassostrea virginica*) outside of the Damariscotta River and condition 4 is removed.

Condition 5 will remain and is renumbered to Condition 2.

The conditions applied to the renewed lease shall be as follows:

1. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than eight people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

5. Decision

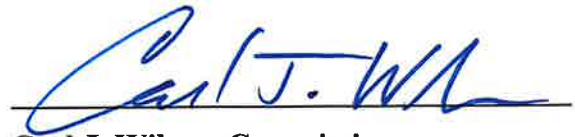
The Commissioner grants the application of Coastal Rivers Conservation Trust to renew their aquaculture lease DAM BP for a period of three years. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

7. Revocation of Lease

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A. §6072-A(22) that the lease activities are substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease, or if any condition of the lease has been violated.

¹¹ <https://www.coastalrivers.org/event/oyster-gardening-2022/>

Dated: 1.26.26



**Carl J. Wilson, Commissioner,
Department of Marine Resources**

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Coastal Rivers Conservation Trust

Aquaculture Lease Renewal Application

DAM BP

Suspended and bottom culture of shellfish in
Blackstone Point, Damariscotta River

3/28/22

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Coastal Rivers Conservation Trust¹ applied to the Department to renew the experimental aquaculture lease for scientific purposes (DAM BP) for a period of three years, ending May 31, 2024. The .06-acre lease is issued for suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern quahogs/hard clams (*Mercenaria mercenaria*) located in Blackstone Point, Damariscotta River, Damariscotta, Lincoln County, Maine. The original lease term began on June 1, 2012. The lease was renewed previously on June 1, 2015, and again on June 1, 2018.

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 *Lincoln County News* on October 7, 2021. Notice was also provided to riparian landowners within 1,000 feet of the site, the Town of Damariscotta, federal and other state agencies and sent to subscribers of DMR's aquaculture email list-serve. No requests for a hearing on this application were received by the Department during the comment period, and no hearing was held.

2. STATUTORY CRITERIA

Applications for the renewal of experimental aquaculture leases for scientific purposes are governed by 12 M.R.S. §6072-A (18) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed unless the lessee has not complied with the lease agreement during its term; research has not been conducted during the term of the lease; or the Commissioner determines that it is not in the best interest of the State to renew the lease. Additionally, the Commissioner may not grant a lease renewal if it would cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

¹ Formerly known as Damariscotta River Association.

A. Compliance with lease

The review of the case file associated with this lease indicates compliance with the lease agreement. Annual inspections of the lease during the previous lease term showed no issues, except for one occurrence of a marking issue that the leaseholder has indicated they will address when installing gear in the coming season. There are no outstanding complaints regarding this lease.

Therefore, I find that the applicant has complied with the lease agreement during its term.

B. Research conducted

A review of the case file associated with this lease and the statement of the lessee on the renewal application show that the educational and scientific aquaculture activities for which this lease was originally proposed and granted have been conducted on this lease site over the lease term.

Therefore, I find that research has been conducted during the term of the lease.

C. 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.

D. Aggregate lease holdings

According to DMR records, the lessee holds the following leases: DAM BP (.06 acres).

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

3. LEASE CONDITIONS

Conditions on the current lease document, which was executed on February 20, 2020, are as follows:

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Shellfish harvesting is prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Dragging is prohibited within the lease boundaries.
- c. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than eight people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site.
- d. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff to determine compliance with these lease conditions.
- e. The lessee must post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters in order to prevent the spread of disease.
- f. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

Condition "a" pertains to site marking. Lease holders are required to mark sites in accordance with DMR's regulations and marking is 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 of Marine Resources grants the application of Coastal Rivers Conservation Trust to renew the experimental aquaculture lease DAM BP for a period of three years, to May 31, 2024. 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

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072-A (18) that the lease activities are substantially injurious to marine organisms, no substantial aquaculture research has been conducted over the course of the lease, or that any of the conditions of the lease has been violated.

6. DATE AND SIGNATURE

Dated: _____

3/28/22



**Patrick C. Keliher, Commissioner,
Department of Marine Resources**

STATE OF MAINE

Damariscotta River Association

DEPARTMENT OF MARINE RESOURCES

Aquaculture Lease Renewal Application

DAM BP

Suspended and bottom culture of shellfish

Blackstone Point, Damariscotta River

December 18, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Damariscotta River Association applied to the Department to renew the experimental aquaculture lease DAM BP for a period of three years to May 31, 2021. The .06-acre lease is issued for suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern quahogs/hard clams (*Mercenaria mercenaria*) located in Blackstone Point, Damariscotta River, Damariscotta, Lincoln County, Maine. This lease was initially issued on June 1, 2012. Lease was renewed previously on June 1, 2015.

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 *Lincoln County News* on August 9, 2018 and August 30, 2018 and in the September edition of *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. 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. §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 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

According to DMR records, the lessee holds the following leases: DAM BP (.06 acres)

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

The following conditions were applied to the lease by the original decision: Conditions imposed on this lease by the decision dated June 1, 2012.

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Shellfish harvesting is prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Dragging is prohibited within the lease boundaries.

- c. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than eight people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site.
- d. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff to determine compliance with these lease conditions.
- e. The lessee must post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters in order to prevent the spread of disease.
- f. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

4. DECISION

The Commissioner of Marine Resources grants the application of Damariscotta River Association to renew the experimental aquaculture lease DMA BP for a period of three years, to May 31, 2021. 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

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: _____

12/18/18



**Patrick C. Keliher, Commissioner,
Department of Marine Resources**

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

Experimental Aquaculture Lease Application

Bottom & suspended culture of shellfish

South of Blackstone Point, Damariscotta River

Damariscotta River Association

Lease DAM BP

Docket # 2015-09-R

October 8, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The Damariscotta River Association has applied to the Department of Marine Resources (“DMR”) to renew its experimental scientific lease, (DAM BP), for three years to May 31, 2018. The lease consists of 0.06 acres (2,500 sq. ft.) located in the coastal waters of the State of Maine, on the east side of the Damariscotta River south of Blackstone Point in the Town of Damariscotta in Lincoln County, and is used for the purpose of cultivating American oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*), using bottom and suspended culture techniques.

1. THE PROCEEDINGS

Notice of the application for lease renewal and the public comment period was published in the *Lincoln County News* on June 18 and July 9, 2015 and in the July 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. No comments or hearing requests were received by the DMR 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

My review of the records of this lease discloses 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. Further, a review of yearly reports filed by lessee shows that the lease is being used for scientific research. 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 this applicant holds 0.06 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. CONDITIONS TO BE IMPOSED ON LEASE

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Shellfish harvesting will be prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Boating and fishing other than dragging will be allowed in the open areas of the lease site.
3. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than eight people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site.
4. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff to determine compliance with these lease conditions.
5. The lessee must post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters in order to prevent the spread of disease.

4. DECISION

The Commissioner of Marine Resources grants the application of the Damariscotta River Association to renew its aquaculture lease DAM BP for a period of three years, to May 31, 2018. 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

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

Experimental Aquaculture Lease Application

Bottom & suspended culture of shellfish

South of Blackstone Point, Damariscotta River

Damariscotta River Association

Lease DAM BP

Docket # 2011-18E

February 8, 2012

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The Damariscotta River Association applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 0.06 acres (2,500 sq. ft.) located in the coastal waters of the State of Maine, on the east side of the Damariscotta River south of Blackstone Point in the Town of Damariscotta in Lincoln County, for the purpose of cultivating American oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*), using bottom and suspended culture techniques. DMR accepted the application as complete on July 20, 2011. The Department advertised a 30-day public comment period, but no comments or requests for hearing were received. No hearing was held on this application.

1. THE PROCEEDINGS

Notices of the application, comment period, and DMR site report were sent to numerous state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Town of Damariscotta and the Damariscotta Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the public comment period was published in the *Lincoln County News* on August 11, 2011.

The evidentiary record before the Department regarding this lease application includes the application, site report, and other materials contained in the Departments file on this application. The evidence from all of these sources is summarized below.¹

2. DESCRIPTION OF THE PROJECT

The Damariscotta River Association plans to use the proposed lease site as a location to conduct an educational program that “uses aquaculture to teach students about such issues as water quality, estuarine ecology, resource use and management, shellfish biology and husbandry” (App 4). Students will grow oysters and possibly soft and hard clams for their own consumption. According to the application,

¹ These sources are cited below as: Case file – “CF”; Application – “App”, site report – “SR”.

DRA and Maine Sea Grant are working together, in an attempt to transfer the OG [Oyster Garden] program into DRA programming, and the change in location for field activities is part of that work. Ideally, if the DRA finds the OG program to be a successful effort, it will be a model for other watershed or conservation/education groups around the state to learn from (App4).

Given this description of the aquaculture activities planned for this site, it is apparent that this experiment is not commercial in nature but rather more akin to a scientific research project, as the project is intended for educational and scientific purposes and shellfish grown at the site will not be sold. Therefore, the Department will consider this lease to be an experimental lease for scientific purposes, which can be renewed, without fee, at three-year intervals, provided it meets the legal standards for renewal contained in DMR Rule 2.64 (12.)

Proposed Operations

The proposed lease site will be used for teaching and demonstration of shellfish aquaculture. American or Eastern oysters will be grown in mesh bags placed on “oyster tables” or “oyster trestles”, which are frames constructed of rebar, wood, or wood and rope on cinder-block supports. The trestles measure approximately 5 ft. by 6 ft. and are approximately 6 to 12 inches high. The bags are clipped with wire to bridles of nylon line that are fastened to the trestles. The trestles will be placed in different locations on the site to test the growth of oysters under different conditions.

Alternatively, some oyster bags may be deployed floating on the surface of the water and secured to cinder block moorings.

A maximum of 15 trestles are proposed for the site, holding up to 4 bags each, for a total of 60 bags. Oysters will be harvested simply by removing them from the bags. Oysters will be wintered over either in pits on the upland shore (which is owned by the applicant) or at the Darling Marine Center in Walpole.

Clams, both soft clams and quahogs, will be free-planted on the bottom in 3-ft. square plots covered with ¼” plastic mesh screening held up by small floats. Clams will be harvested with clam rakes or by hand picking.

According to the application, the focus of the project will be oyster culture. Each student will have 500 to 600 15-mm oyster seed to grow. If clam species are used, students will receive similar amounts of seed. The applicant expects about 12 students to participate in the program (App 4).

Site Characteristics

Department biologists visited the proposed site and conducted a SCUBA dive there on October 28, 2011. The site report notes:

Before visiting the lease site, DMR staff verified the location of the coordinates provided in the application. Due to the very small size of the proposed lease site, the coordinates provided in the application did not accurately describe the desired 50' by 50' square located fifteen feet from shore. Working with the applicant, DMR staff derived coordinates that accurately describe the desired dimensions and location. They are listed above [i.e., in the site report] and describe an area of 0.06 acres.

The coordinates developed by Department staff will be used in the lease.

The map in the application and the aerial photograph in the site report show the site as a very small square tucked up close to shore on the southeast side of Blackstone Point on the east side of the Damariscotta River above the northernmost Route 1 bridge (App 2, SR 1). The application describes the bottom of the site as flat, consisting of 8–10 inches of silty mud over bedrock. Water depths are listed in the application as approximately 1 ft. at low tide and 4 ft. at high tide. The current runs north-south with the flow of the tide, but its speed is minimal to non-existent, since the site is located well away from the channel.

The upland of Blackstone Point is undeveloped and consists mainly of gently sloping old fields with grasses and shrubs and some stands of mature trees (App 7). The Damariscotta River Association owns Blackstone Point. Several widely-spaced residential properties lie along the shoreline to the east of the point.

The site report notes that “the area of the proposed lease is classified as “conditionally approved” for the harvest of shellfish. This approval is contingent upon appropriate operation of the Great Salt Bay sewage treatment facility” (SR3).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR if s/he determines 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, or docking facilities 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.

A. Riparian Access

According to the site report, “No moorings or docks were located in the immediate vicinity. One dock is located approximately 620 feet to the southeast of the proposed location and should not be affected by the proposed activities”. The report concludes that “Riparian access would not be restricted in any way,” noting that the Damariscotta River Association is

the nearest shorefront property owner (SR2). Based on this evidence, it appears that the proposed lease site will not hamper riparian access to and from the shore.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The site report observes that "Navigation in the area is expected to be very light and the area of the proposed lease is approximately 15' from shore in shallow water (1-4 feet)" (SR 2). The proposed lease site is very near shore at the head of the cove formed where Blackstone Point juts southward into the Damariscotta River. It is located completely out of the channel in shallow water. Based on this evidence it is clear that the proposed lease site will not restrict navigation in the area.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

C. Fishing & Other Uses

According to the site report,

No commercial fishing was observed on October 28th and none is expected in the area. No commercially exploitable resources were evident in the area and navigation from the upper reaches of the Damariscotta estuary is greatly restricted by shallow water and rapid current between two bridges (Main St. and Route 1). Some recreational hook and line fishing may occur in the vicinity although the small size of the proposed lease (50' x 50') should represent minimal interference.

The application states that no one has been seen "closer to the proposed site than on the DRA trails some 50' from the edge of the water" (App 5). Based on this evidence it appears that the proposed lease will not infringe on other activities, including fishing, in the area.

Exclusivity. The application states that as long as gear at the site is not molested, the applicant is not requesting any restrictions on other activities at the site. To protect the shellfish there, a condition will be placed on the lease prohibiting shellfish harvesting on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Fishing, other than dragging or shellfish harvesting, and boating will be allowed in the open areas of the lease site.

Other aquaculture leases. One other aquaculture lease is located across the river approximately 900 ft. south of the proposed lease site, and two license sites are located approximately 700 ft. to the southeast. The proposed lease site will not interfere with activities at either of these existing sites.

The lease must be marked in accordance with DMR Rule 2.80²

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area. Shellfish harvesting will be prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Boating and fishing other than dragging will be allowed in the open areas of the lease site. The lease must be marked in accordance with DMR Rule 2.80.

D. Flora & Fauna

The aquaculture activities at the proposed site will be conducted on foot, so that people will be standing in the mud to tend the oyster bags. The site report makes the following observations:

The entire cove in which the lease site is proposed is designated tidal wading bird habitat by the Maine Dept. of Environmental Protection. Records at the Maine DMR show eel grass (*Zostera marina*) located in the outer cove approximately 400 feet from the proposed lease site. While snorkeling the area of the proposed lease site, DMR staff noted the regular occurrence of eel grass starting approximately 75 feet from shore throughout the area. Estimated total coverage was 15 percent. The location of the lease site did not contain eel grass. The area also contained a large number of mud snails (*Nassarius obsoletus*) and “sea lettuce” (*Ulva lactuca*).

The bottom substrate was very fine mud which when disturbed created a mud-plume that was very slowly dispersed by negligible currents. Excessive sedimentation in the water column can interfere with the growing oysters themselves and also with photosynthesis by eel grass. Therefore bottom disturbance around the site should be managed (SR 3).

According to the site report, the applicant has agreed to the following restrictions in order to protect the eel grass in the vicinity (SR 3):

²**2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

1. Limit the total person-in-the-water on the site to 15 hours any given week and not more than 5 hours/day.
2. When there are more than eight people in the water the DRA will limit the time in the water to no more than one hour followed by a minimum of 1 hour "sediment settling time".
3. Maintain an activity log with a sign-in / sign-out component for farm activities that would be available to DMR staff for inspection should concerns about bottom disturbance arise.

The application notes that the DRA will use the site

"...for educational purposes and field trial (growing species by means of a less common method, suspended from fixed tables in the near-shore area). As an educational program the site is accessible by the DRA's other members, and we anticipate using it as a teaching tool to DRA members and guests who are not necessarily a part of the OG program. For example, we welcome hundreds of children and older students to the property, and we can use the OG site as a way to teach material related to water quality, food production, multiple use of natural resources, management, and many other issues"(App 5).

Thus, it appears possible that more people than twelve oyster gardening students may be present on the proposed lease site from time to time. It is important that the applicant apply the restrictions to all people using the aquaculture site, not just to participants in the oyster gardener program.

It is also important to note that because of the presence of the oyster disease "MSX", American oysters from the Damariscotta and Johns Rivers may not be moved to any other coastal waters outside the area north of a line between Ocean Point, Boothbay and Pemaquid Point, Bristol.³ It is vital that the DRA ensure that anyone taking oysters from the proposed lease site be made aware of this restriction and the potential consequences of disregarding it, which include the risk of spreading disease to areas that are not now affected. The applicant will be required to post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters, in order to prevent the spread of disease.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna, provided that conditions are placed on the lease as described above to limit and track activity on the site in order to limit sedimentation, and provided that the applicant posts a sign at the site regarding disease restrictions on American oysters in the Damariscotta River.

³ DMR Rules, Chapter 24 <http://www.maine.gov/sos/cec/rules/13/chaps13.htm>

E. Public Use & Enjoyment

According to the site report, there are no government-owned beaches, parks, or docking facilities located within 1,000 ft. of the proposed lease site (SR 3).

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

F. Source of Organisms

The application indicates that seed for the aquaculture project will be obtained from Muscongus Bay Aquaculture in Bremen, Maine; Pemaquid Oyster Company in Waldoboro, Maine; and Downeast Institute in Beals, Maine.

Therefore, I find that the applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*) to be cultured for the lease site.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site shall be marked in accordance with U. S. Coast Guard requirements.
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area. Shellfish harvesting will be prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Boating and fishing other than dragging will be allowed in the open areas of the lease site. The lease must be marked in accordance with DMR Rule 2.80.
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna, provided that activity on the site is restricted in extent, duration, and frequency as specified above in this decision and a record of the activities on site is maintained in order to limit sedimentation, and provided that the applicant posts a sign at the site regarding disease restrictions on American oysters in the Damariscotta River.
5. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

6. The applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*) to be cultured for the lease site.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 0.06 acres to the Damariscotta River Association for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the applicant⁴; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This limited-purpose (experimental) lease is granted to the applicant for the purpose of cultivating American oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), and northern/hard clams or quahogs (*Mercenaria mercenaria*) using bottom and suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (D) in the amount of \$5,000.00, conditioned upon the performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

The Department will consider this lease to be an experimental lease for scientific purposes, which can be renewed, without fee, at three-year intervals, provided it meets the legal standards for renewal contained in DMR Rule 2.64(12.)

6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 MRSA §6072-A (15)⁵. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The following conditions shall be incorporated into the lease:

⁴ DMR Rule 2.64 (14) provides:

“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

⁵ 12 MRSA §6072-A (15) provides that:

“The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.

2. Shellfish harvesting will be prohibited on the site by anyone except the applicant or its authorized agents; students using the site are considered authorized agents for purposes of this condition. Boating and fishing other than dragging will be allowed in the open areas of the lease site. The lease must be marked in accordance with DMR Rule 2.80.

3. To minimize sediment disturbance, people may be in the water at the site for a maximum of 5 hours per day and 15 hours per week. Groups of more than 8 people are limited to no more than one hour in the water, after which a one-hour sediment settling time is required during which no person is allowed in the water at the site.

4. The lessee must maintain a log to record daily use of the site by all users and document the numbers of people and the times when they are in the water. The log must be available for inspection by DMR staff to determine compliance with these lease conditions.

5. The lessee must post a sign at the site warning that oysters from the Damariscotta River must not be moved to other Maine coastal waters in order to prevent the spread of disease.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: FEB 8, 2012


Patrick C. Keliher, Commissioner
Department of Marine Resources