

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Bottom culture of American oysters,
Pulpit Harbor Mill Stream

Adam & Michelle Campbell
PHMS NH2
April 25, 2022

AQUACULTURE LEASE RENEWAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Adam and Michelle Campbell applied to the Department of Marine Resources to renew the aquaculture lease PHMS NH2 for a period of 20 years. The 2.53 acres is located in the coastal waters of the State of Maine, in the Pulpit Harbor Mill Stream in the Town of North Haven in Knox County, for the purpose of cultivating American oysters (*Crassostrea virginica*) using bottom and suspended culture techniques. DMR accepted the application as complete on December 9, 2021.

1. PROCEDURE

Notice of the completed renewal application and the 30-day public comment period and opportunity to request a public hearing was published in the *Courier Gazette* on January 13, 2022. Notice was also provided to the municipality, riparian landowners within 1,000 feet of the site, and other state agencies, and sent to subscribers of DMR's aquaculture email list-serve. There was one comment received which included a request for a public hearing, and which is addressed in Section 2(A) of this decision. Because a hearing is optional for lease renewal applications unless DMR receives five or more written requests from interested persons during the comment period, a hearing was not held for this renewal application.

2. STATUTORY CRITERIA

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

As mentioned in Section 1 of this decision, there was one comment received on January 25, 2022, submitted by Judy A.S. Metcalf of Eaton Peabody, on behalf of Hugh D.S. Greenway and Joy B. Greenway in their capacity as Trustees of the Greenway Nominee Realty Trust (hereinafter the Trustees).¹ The comment alleged that Mr. Campbell has used a riparian landowner's private road to access his lease site without permission, license, or an easement. When the original lease agreement was issued, Mr. Campbell had testified that he intended to reach the lease site by boat from Pulpit Harbor, using a 16-foot Carolina skiff with a 10-horsepower, 4-stroke outboard motor. The comment asserts that Mr. Campbell is in violation of 12 M.R.S. §6072(12) and Chapter 2.45 of DMR's rules. Specifically, the comment alleges that Mr. Campbell (1) has failed to comply with the lease agreement; and (2) his operations are not in the best interests of the State. Due to the alleged violations, the Trustees have requested that DMR incorporate an express condition into the renewed lease that the subtidal lands leased by Mr. Campbell be accessed exclusively via boat and that no boat or access be launched via the riparian owner's private road.

Because there is no condition prohibiting Mr. Campbell's use of the private road, his use of that road does not violate the lease agreement. Further, legal remedies are available to the riparian owners to address any unauthorized use by Mr. Campbell of their property; and, because DMR finds that disputes over Mr. Campbell's use of the riparian owners' property are best dealt with as a private legal matter, as opposed to being resolved by DMR through the aquaculture leasing process, no condition will be added requiring Mr. Campbell to access his lease exclusively by boat from Pulpit Harbor.

Other than the alleged use of the riparian owner's private road, the review of the case file associated with this lease indicates compliance with the lease agreement. There are no outstanding complaints regarding this lease.

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

¹ Letter to DMR, dated Jan. 25, 2022, from Judy Metcalf at Eaton Peabody in response to request for public comment.

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. As stated above, DMR received one comment submitted by Judy A.S. Metcalf of Eaton Peabody, on behalf of Hugh D.S. Greenway and Joy B. Greenway in their capacity as Trustees of the Greenway Nominee Realty Trust. The comment alleges that Mr. Campbell's operations are not in the best interests of the state because they conflict with the existing use of the Greenway's access to their property. As previously stated, DMR does not find that Mr. Campbell is in violation of his lease. Mr. Campbell is able to access his lease site via Pulpit Harbor which does not conflict with new or existing uses of the area.

Other than the aforementioned comment, the Maine Department of Inland Fisheries and Wildlife indicated that 'minimal impacts to wildlife are anticipated for this project.'²

Based upon review of the file, DMR does not find that renewal of the lease would conflict with new or existing uses of the areas.

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, Adam & Michelle Campbell hold the following leases: PHMS NH2 (2.53 acres), and PHSP NH (16.22 acres)³ for a total of 18.75 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

Chapter 2.45(2)(A) of DMR's rules provide that in determining whether a renewal is being conducted for speculative purposes, the Commissioner must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the

² Email to DMR from R. Settele on Jan. 19, 2022 in response for a request for agency review and comment on the completed renewal application.

³ DMR now calculates acreage using mapping software, and is in the process of updating lease documents to reflect this new method. As a result of this new calculation method, the acreage listed in Section 2.C may be slightly different than the acreage listed in the respective lease documents. The acreage listed in the executed lease is 16.59 acres.

previous lease term.” The renewal application indicates that oysters were cultivated during the previous lease term.⁴ This is consistent with a review of the record, which indicates aquaculture activities occurred on the site during the previous lease term.⁵

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:

- a. The lease site must be marked in accordance with DMR Rule 2.80, in this case by placing signs on stakes at or shoreward of the northwest and southwest corners of the lease and at the northeast and southeast corners of the lease.
- b. Only the subtidal areas of Pulpit Harbor Mill Stream within the leased boundaries are leased for cultivating oysters. The intertidal areas within the lease boundaries are not leased.
- c. Fishing and navigation are permitted within the boundaries of the lease, but shellfish harvesting is prohibited in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries by anyone other than the lessees and their authorized agents.
- d. No gear or structures may be placed in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries, except by permission of the lessees or their authorized agents.

The above conditions will remain on the renewed lease, except condition (a) will be removed and (c) will be updated. Condition (a) requires that the site be marked in accordance with Chapter 2.80 of DMR’s regulations and requires that signs on stakes be placed at specified corners of the lease site. According to the original decision, Mr. Campbell was concerned about how to best mark the site boundaries as ice would likely remove any buoys in the Mill Stream.⁶ Mr. Campbell proposed placing stakes with signs and DMR advised placing two such markers at

⁴ See page 1, item 2 of the renewal application.

⁵ Annual reporting was in effect for a majority of the previous lease, but annual reporting requirements were changed in 2021 such that harvesters now purchase a harvester license and report to the Landings Program under DMR Rule 8.20(s). Annual reports between 2013 and 2020 show the lease was used and harvests were conducted. Taking into account that oysters typically take 2-3 years to get to market size, we can be fairly confident that the site was also used in 2011 and 2012.

⁶ PHMS NH2 original decision, dated December 2, 2011, at pg. 8

each end of the proposed site to better delineate the leased area.⁷ Per the original decision, Mr. Campbell and DMR were the only stakeholders who provided testimony about site markings. The original marking condition attempted to codify the marking suggestion made by Mr. Campbell, which were further elucidated by DMR. It appears that those suggestions were made to ensure that the site remained marked through periods of ice and that the lease area was clearly delineated. In processing the renewal application, DMR did not receive any comments specific to site marking.

Site marking requirements contained in Chapter 2.80 of DMR's regulations, specify, in part, that lease sites need to be marked with yellow floating devices in a manner that clearly delineates the leased area. In situations where the topography or other site characteristics interrupt the line of site from one marker to the next, the holder is required to deploy additional floating markers.

These marking requirements would not preclude the Campbells from continuing to use stakes with signs to further mark the area and the signs would be displayed along the surface of the water and secured in the substrate. This is very similar to a buoy or other floating device that sits at the surface of the water and is anchored to a mooring.

In reviewing the previous marking condition, DMR finds that it is not necessary to expressly require that the site be marked with additional signage as marking requirements specify that all sites must be clearly marked to delineate the leased area and they provide for additional markings in cases where site characteristics merit them. Therefore, condition (a) will be removed from the decision if the renewal is granted.

Condition (c) pertains to other users of the leased area, and shellfish harvesting by anyone other than the lessee is enforceable under other provisions of law,⁸ and therefore will be updated as follows:

- c. Fishing and navigation are permitted within the boundaries of the lease.

4. DECISION

The Commissioner grants the application of Adam & Michelle Campbell to renew the aquaculture lease PHMS NH2 for a period of twenty years. The renewed lease is subject to the

⁷ Ibid.

⁸ 12 M.R.S. § 6072(2) states "it shall be unlawful to interfere with the rights provided in a lease."

same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

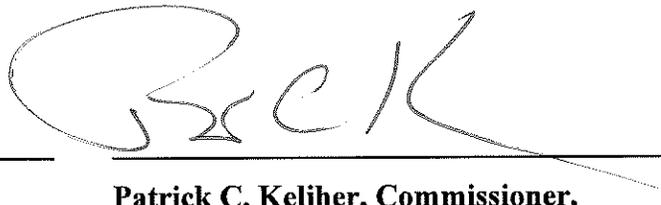
5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S. §6072(11) 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: _____

4/25/2022



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