

STATE OF MAINE

Jesse Leach

DEPARTMENT OF MARINE RESOURCES

Aquaculture Lease Renewal Application

BAG SB

Suspended culture of shellfish and urchins

Bagaduce River, Brooksville and Sedgwick

April 14, 2022

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Jesse Leach applied to the Department of Marine Resources (DMR) to renew the aquaculture lease BAG SB for a period of 20 years. The 4.12-acre¹ lease is issued for the suspended culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), surf clams (*Spisula solidissima*), soft clams (*Mya arenaria*) and green sea urchins (*Strongylocentrotus droebachiensis*). The site is located west of Bear Head, in the Bagaduce River in the towns of Brooksville and Sedgwick. This lease was initially issued to Jesse Leach on February 15, 2000 and subsequently renewed on January 5, 2011.

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 *Weekly Packet* on January 2, 2020. Notice was also provided to the municipalities, other state agencies and sent to subscribers of DMR's aquaculture email list-serve. Notice was also provided to riparian landowners within 1,000 feet of the lease site. During the comment period, DMR received more than five requests to hold a public hearing on the renewal request. Therefore, a public hearing was scheduled for October 13, 2021 at the Brooksville Town Hall.

Notice of the public hearing was published in the September 9 and 30, 2021 editions of the *Weekly Packet*. Notice was also provided to the municipalities, other state agencies and sent to subscribers of DMR's aquaculture email list-serve. Notice was provided to riparian landowners within 1,000 feet of the lease site. The hearing notice required persons who wanted to provide testimony or ask questions of the applicant to register to participate in the proceeding by 5:00 p.m. on September 28,

¹ The lease agreement lists the acreage at 4.13 acres. The GIS database lists the acreage at 4.12 acres. In some cases, there may be a difference between the acreage listed in a lease decision/agreement and the acreage calculated from the lease coordinates using relatively new and more accurate mapping software. When such a discrepancy occurs, it is DMR's policy to use the acreage in the GIS database and update lease decisions and agreements accordingly. The difference does not change the footprint of the lease site or any other elements of the lease agreement. Using the acreage from the database helps ensure that acreage is consistent across the leasing program. DMR will update the lease agreement for this site, so it reflects the acreage in the GIS database.

2021. Seven individuals registered to participate in the proceeding by the specified deadline. DMR did not receive any applications to intervene.

On October 7, 2021, the municipality informed DMR that the Town Hall had implemented capacity limitations due to COVID-19. Given the number of registered participants and the capacity limitations, DMR was unable to use the municipal space for the October 13, 2021 hearing. Therefore, the hearing was postponed to October 18, 2021, which was one of the alternate dates listed in the hearing notice. DMR changed the venue from the Brooksville Town Hall to the Brooksville Community Center. Notice of the alternate day and change of venue was sent to all registered participants, posted to DMR’s website, and sent to subscribers of DMR’s aquaculture email list serve. The hearing was held on October 18, 2021 and the following persons provided testimony:

Name	Affiliation
Jesse Leach	Applicant
Thomas Adamo and James Saltonstall	Members of the Public

Mr. Leach described the aquaculture activities he conducted over the previous lease term. In addition, he requested, that Bagaduce River Oysters, LLC be added as a co-lessee if the lease was renewed. Mr. Leach testified that he owns the company and has been conducting aquaculture related business under the company for several years. Mr. Leach noted that adding the company as an additional lease holder would help ensure that his son or other family members could operate the site, under the company, if he was unable to. No one in attendance raised concerns about Mr. Leach’s request to add his company as an additional lease holder.

Messrs. Adamo and Saltonstall were generally supportive of Mr. Leach’s operations. Mr. Saltonstall provided his observations of aquaculture operations in the area and noted Mr. Leach’s site was well managed. Mr. Adamo took exception to aquaculture related laws and policies including the allowable length of lease terms, the timing and format of lease hearings, and the lease transfer process. Members of the public in attendance were able to ask questions of the applicant and DMR staff. The Hearings Officer for the proceeding was Amanda Ellis.

2. STATUTORY CRITERIA

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

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.

B. Best interest of the State of Maine

In determining whether it is in the best interest of 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 did not receive any comments or testimony to suggest that the lease site is conflicting with new or existing uses of the area. During the hearing, Mr. Saltonstall testified that Mr. Leach’s site has been well managed and was unaware of any conflicts concerning Mr. Leach’s site. Based on the record, there is no evidence of conflicts 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, BAG SB is the only lease site held by Jesse Leach and it is 4.12 acres in size. If the company is added to the lease, BAG SB would be the only site partially held by Bagaduce River Oysters, LLC, which is owned by Mr. Leach.

Therefore, I find that the renewal of this lease will not cause the existing lessee, or the pro-posed co-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 aquaculture activities occurred on the site during the previous lease term, which is consistent with the testimony Mr. Leach provided at the public hearing. It is also 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. Bagaduce River Oysters, LLC as Co-Lessee

As previously noted, Mr. Leach requested that his corporation, Bagaduce River Oysters, LLC be added to the lease as co-lessee. Bagaduce River Oysters, LLC was initially incorporated in Maine in 2017 and Mr. Leach testified that he owns the company. According to Mr. Leach, he has conducted aquaculture related business under the company name and would like the company to be a co-lessee as part of his business operations.

Adding a new lessee to an existing lease generally constitutes a transfer of the lease, which would require the lessee to apply to DMR for a lease transfer. Under the specific circumstances of this case, however, DMR determined that a lease

transfer may not be necessary for the following reasons: the corporation was formed by Mr. Leach and Mr. Leach indicated that he wholly owned the company; the purpose of adding the corporation to the lease would be to avoid termination of the lease in the event that Mr. Leach is no longer able to operate the site; and Mr. Leach indicated that there is no intent to transfer ownership or control of the business to any person other than inheritance by family members.

Following the hearing, DMR reviewed the corporate filings for Bagaduce River Oysters LLC, which are maintained by the Maine Secretary of State's office. The 2017 Certificate of Formation listed Jesse Leach and Eric Moran² as authorized persons. There were no corporate filings showing that Mr. Moran's interest in the LLC have been terminated.

DMR subsequently contacted Mr. Leach for clarification regarding Mr. Moran's interest in the LLC. Mr. Leach indicated that despite several attempts he has been unable to contact Mr. Moran and that Mr. Moran no longer helps with site operations. Mr. Leach stated his belief that he wholly owned the company. However, there is no evidence to demonstrate that Mr. Moran ever formally disassociated himself from the LLC or that his interest was otherwise dissolved. Therefore, it appears that Mr. Moran still has an interest in the company.

Since Bagaduce River Oysters LLC may not be wholly owned by Mr. Leach, adding the company as additional lease holder would constitute a lease transfer. DMR cannot consider adding the company as part of this renewal request. If Mr. Leach wishes to add the company as an additional lease holder, he would need to apply for and be granted a lease transfer. Therefore, if the renewal is granted, Bagaduce River Oysters LLC will not be added as a co-lessee. Mr. Leach indicated that if Bagaduce River Oysters LLC could not be added as co-lessee he would still like the lease renewed in his name.

4. LEASE CONDITIONS

The following conditions were applied to the lease by the original decision:

- a) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources requirements, except that only corner buoys shall be deployed on the bottom tract in order not to impede navigation.
- b) Recreational boating and recreational fishing, otherwise permitted by law, are allowed in the open areas of the lease.
- c) There shall be no unauthorized access to riparian land except in extreme emergencies or to clean up any debris that may have blow on shore from the lease site.

² Based on DMR's understanding, Mr. Moran used to help Mr. Leach operate BAG SB. Based on filings, Messrs. Moran and Leach have an interest in Bagaduce River Oysters LLC.

If this lease is renewed, condition "a" will be modified to remove references to the U.S. Coast Guard and DMR site marking requirements. Lease marking requirements are specified in Chapter 2.80 of DMR's regulations. If the lease is renewed condition "a" will read:

- a) Only corner buoys shall be deployed on the bottom tract in order not to impede navigation.

Condition "c" pertains to accessing privately owned property during emergencies and the retrieval of errant gear. DMR does not have the legal authority to condition access to privately owned land. In accordance with Chapter 2.75 lease holders are responsible for the retrieval of any errant gear. Therefore, if the lease is renewed this condition will be removed.

5. DECISION

The Commissioner grants the application of Jesse Leach to renew the aquaculture lease BAG SB for a period of twenty 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.

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 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: 4/14/22 
Patrick C. Keliher, Commissioner,
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Renewal of suspended lease
Bagaduce River, Brooksville & Sedgwick

Jesse Leach
Lease BAG SB
Docket #2009-15R
January 5, 2011

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On November 11, 2009, Jesse Leach applied to renew, for a period of ten years, an aquaculture lease for 4.03 acres for suspended and “bottom containment” culture of American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), soft clams (*Mya arenaria*), and green sea urchins (*Strongylocentrotus droebachiensis*) located in the Bagaduce River, west of Bear Head, in the Towns of Brooksville and Sedgwick in Hancock in County, Maine. This lease was initially granted on February 15, 2000 for a period of ten years to February 14, 2010. A species amendment adding sea urchins as an authorized species was granted in 2009.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* January, 2010 issue and in the *Ellsworth American* on Dec. 24, 2009 and Jan. 14, 2010. 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 has been paid, the bond has been kept current, and the site has passed inspections by DMR Marine Patrol. There are no outstanding complaints regarding the operation of the site.

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 considers, 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 only this aquaculture lease. The acreage of the lease is described in the original decision and lease as being 4.03 acres, but a review of the decision dated February 15, 2000 reveals an error in the calculation of the acreage. The entire site is described in that decision as an area measuring 300 ft. by 600 ft. The decision says:

“This area is divided into two adjacent tracts, a suspended with bottom (containment) culture tract that would be 200’ by 600’, and a bottom (containment) tract that would be 100’ by 600’. The acreage of the surface portion of the site, based on the dimensions, would be 2.75 acres. The bottom only tract would be 1.38 acres, for a total acreage of 4.03 acres.”

In fact, adding 2.75 and 1.38 gives a total acreage of 4.13 acres. The renewed lease will reflect this figure. Mr. Leach currently holds only 4.13 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.

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

3. OTHER ISSUES

A. Lease Conditions

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

1. Recreational boating and recreational fishing, otherwise permitted by law, are allowed in the open areas of the lease.

2. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources requirements, except that only corner buoys shall be deployed on the bottom tract, in order not to impede navigation.

3. There shall be no unauthorized access to riparian land except in extreme emergencies or to clean up any debris that may have blown on shore from the lease site.

B. “Bottom containment” culture

As described under part C above, the lease site is apportioned into two parts, one for gear deployed on the surface and bottom, and a smaller area for gear deployed on the bottom only. In the original decision and lease, this form of bottom culture is referred to as “bottom containment”.

The original decision describes the culture techniques proposed by Mr. Leach and notes that “The applicant stated that he was not seeking permission to bottom plant or broadcast shellfish” (Decision dated February 15, 2000, p. 3). “Bottom containment” was used to refer to his plan to deploy cages on the bottom to grow out oysters and other shellfish.

In the years since this decision was originally issued, the term “bottom culture” has come to be used only for the practice of planting shellfish directly on the bottom, without the use of gear other than the required marker buoys. The use of any kind of gear, whether at the surface or on the bottom, is now referred to as “suspended culture”. Therefore, this lease will be modified upon renewal to read “suspended culture” only, which is consistent with the culture techniques described and approved in the original decision.

4. DECISION

The Commissioner of Marine Resources grants the application of Jesse Leach for renewal of aquaculture lease BAG SB for 4.13 acres for suspended culture of American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), soft clams (*Mya arenaria*), and green sea urchins (*Strongylocentrotus droebachiensis*) located in the Bagaduce River, west of Bear Head, in the Towns of Brooksville and Sedgwick in Hancock County, Maine, for a period of ten years to February 14, 2020, subject to the same terms, conditions, and obligations as set forth in the original lease, with the modifications described above.

Dated: 1/5/11

/s/ George D. Lapointe
George D. Lapointe (Commissioner)
Department of Marine Resources