STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Renewal Application
January 14, 2009

Mook Sea Farm, Inc.
Lease DAM EL2
Docket # 2007-16R

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On November 29, 2007, Mook Sea Farm, Inc. applied to renew, for a period of ten years to March 3, 2018, its aquaculture lease DAM EL2 for 8.8 acres of coastal waters for bottom culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), quahogs/hard clams (*Mercenaria mercenaria*), and soft-shell clams (*Mya arenaria*) located northeast of Little Point in the Damariscotta River in the Towns of Newcastle and Damariscotta, Lincoln County, Maine. This lease was initially issued on March 4, 1998. The lease description has been verified and revised by agreement with the leaseholder; as revised, the acreage is approximately 8 acres.

1. PROCEEDINGS

Notice of the application and of the 30-day comment period was mailed on January 7, 2008, to all riparian owners, the Towns of Newcastle and Damariscotta, and to the general mailing list of interested persons and reviewing agencies. Notices of the application and comment period were published in the *Lincoln County News* on January 17 and February 7, 2008, and in the *Commercial Fisheries News* for February, 2008. No comments were received, and no hearing was held.

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 in a timely manner, an escrow account is in place, and the site has passed inspections by DMR Marine Patrol.

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

B. Best interest of the State of Maine

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

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

C. Aggregate lease holdings

DMR records show that this applicant holds 41.6 acres under three aquaculture leases: DAM PP, DAM EL, and DAM EL2.

Therefore, I find that the renewal of this lease will not cause the lessee to be a tenant of any kind in leases covering an aggregate of 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. DECISION

The Commissioner of Marine Resources grants the application of Mook Sea Farm, Inc. for renewal of the aquaculture lease DAM EL2, consisting of 8 acres located northeast of Little Point in the Damariscotta River, for a period of ten years, to March 3, 2018. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

4. CONDITIONS

Pursuant to 12 MRSA §6072 (7-B), the Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. 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. Existing conditions on this lease, first imposed by the decision dated March 4, 1998, and which continue in effect under the renewed lease, are:

1. Lobster, crab, and recreational fishing are to be allowed on the lease.

2. The riparian landowners are to be allowed boat moorings as designated by the local harbormaster(s).

3. The lease area shall be marked in accordance with U. S. Coast Guard regulations; the lease area shall be marked in accordance with Department of Marine Resources regulations Chapter 2.80, with markers placed no more than 300 feet apart and at each corner. This requirement applies to each of the 3 tracts described, and all corner and boundary marker buoys shall be moored with the helix-type moorings described.

4. The planting density of oysters shall be restricted to no greater than 520,000 oysters per acre; up-to-date records of the seeding quantities of all shellfish shall be kept at the Walpole facility for inspection by the Department during normal business hours for the duration of the lease; dragging shall be limited to the hard bottom substrate in the channels described, bounded by bounded by helix-type moorings.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures if it is determined that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law is not being observed, the Commissioner may revoke the aquaculture lease.

Dated: 15 Jan 2009

George D. Lapointe (Commissioner)
Department of Marine Resources