

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Renewal of bottom lease for shellfish
Damariscotta River

Mook Sea Farm, Inc.
Lease DAM PP
Docket # 2010-08R

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On April 13, 2010, the Department received an application from Mook Sea Farm, Inc., to renew, for a period of ten years to July 19, 2020, its aquaculture lease for 23.8 acres, more or less, for bottom culture of American or Eastern oysters, (*Crassostrea virginica*), European oysters, (*Ostrea edulis*), quahogs (*Mercenaria mercenaria*), soft-shell clams (*Mya arenaria*) and surf clams (*Spisula solidissima*) located in the Damariscotta River, north of Perkins Point in the Town of Newcastle, Lincoln County, Maine. This lease was initially issued in 1990 to Associated Sea Farms, a joint venture between Dodge Cove Marine Farms and Mook Sea Farm. In 2008, by agreement, Mook Sea Farm, Inc. became the sole leaseholder, and the lease was accordingly rewritten for the balance of its term.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* May, 2010 edition and in the *Lincoln County News* on April 29 and May 13, 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 requests for a hearing on this application were received by the Department during the comment period. One comment was received and is addressed below.

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, the bond has been kept current, and the site has passed inspections 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

The Department's rule interprets the statutory requirement that the commissioner determine that renewal of the lease "is in the best interest of the State" as follows:

Consideration of the best interest of the state may include, but shall not be limited to, 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 (Chapter 2.45)(3) (C)).

The sole comment submitted in response to the notice of this renewal application came from the riparian owners of Lot 59 on Newcastle tax map 3, a portion of which is located within 1,000 ft. of the northwest corner of the lease site. In their comment letter dated May 23, 2010, these owners state that they have no objection to the renewal, provided it "would not interfere with or prohibit construction and use of a dock and float off our property in the vicinity of the aquaculture lease". They request "that the Department of Marine Resources and Mook Sea Farm, Inc. give us assurance in writing that the aquaculture lease renewal will not interfere with or prohibit construction and use of a dock and float on the portion of our property near the lease. If the lease renewal will limit or prohibit our construction and use of a dock and float on the portion of our property near the lease, we request that the lease be modified so it will not interfere with construction and use of a dock and float."

This aquaculture lease has been in existence for more than twenty years. At the time it was initially issued in 1990, no issues were raised regarding future docks along the shore parallel to the lease site. The issue of future moorings, however, was raised at the public hearing and resolved by agreement between the applicants, the witness who raised the issue, and the DMR hearing officer¹. That agreement is reflected in one of the conditions placed on the lease, which provides that

Riparian owners in Newcastle of lots 59, 60, 63, and 65A shall have the right of single vessel mooring spaces off their properties. The lessee shall have the right to temporarily displace and relocate these moorings during harvesting of its shellfish.

¹ See decision of Department of Marine Resources Commissioner on application of Associated Sea Farms, July 20, 1990.

Had a dock existed on this lot at the time of the initial lease application, the lease would have been sited so as not to interfere unreasonably with it. Similarly, a dock proposed for an area where a lease is already located must accommodate the pre-existing lease site.

Construction of a new dock and float by the riparians would require a permit from the U.S. Army Corps of Engineers and would constitute a new use of the area. Without a specific proposal for a dock and float in a particular location, it is impossible to know whether this new use would actually conflict with the existing bottom lease. Therefore it is premature for the Commissioner to judge which is the “higher use of the area from the perspective of the public interest”.

The Department cannot assure the landowners, in writing or otherwise, that the aquaculture lease renewal will not interfere with or prohibit construction and use of a dock and float on the portion of the landowners’ property near the lease, nor will it “modify” the existing lease to accommodate a new use that is hypothetical at this time. Nonetheless, the Department recognizes the interest of these riparian landowners in being able to construct a dock that otherwise meets legal requirements. Therefore, should a dock be proposed that would conflict with the lease site, the Department will, within the limits of its legal authority, cooperate with the leaseholder and the landowners, and with state and federal agencies that have permitting jurisdiction over the construction of the dock by the landowners, to resolve dock permitting issues that relate to this aquaculture lease site.

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 the following aquaculture leases, totaling 37.4 acres:

DAM EL - 4.8 acres

DAM EL2 - 8.8 acres

DAM PP – 23.8 acres

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 states in the renewal application: “During the previous lease term we bottom planted between 400,000 and 700,000 oysters per year and harvested between 300,000 and 400,000 market oysters per year.” The applicant also describes plans for aquaculture during the new lease term as follows: “We will be culturing American oysters (*Crassostrea virginica*) on bottom. We plan to plant and harvest 1.5 to 2.0 million oysters per year.” In addition, the annual

reports the applicant has filed with the Department show the ongoing use of this lease site for active aquaculture.

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

3. OTHER ISSUES

Lease Conditions

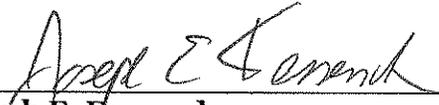
The following conditions, described in the original decision of July 20, 1990 initially granting this lease, will continue to apply to the renewed lease:

1. Riparian owners in Newcastle of lots 59, 60, 63, and 65A shall have the right of single vessel mooring spaces off their properties. The lessee shall have the right to temporarily displace and relocate these moorings during harvesting of its shellfish.
2. Lobstering and crabbing will be allowed on the lease.
3. The lease area shall be marked in accordance with U.S. Coast Guard and the Department of Marine Resources requirements.

4. DECISION

The Commissioner of Marine Resources grants the application of Mook Sea Farm, Inc. to renew the above-described aquaculture lease for a period of ten years, to July 19, 2020. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: 1-27-11



Joseph E. Fessenden
Acting Commissioner
Department of Marine Resources