

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Renewal Application
Bottom culture of shellfish
Damariscotta River, Bristol and South Bristol

Glidden Point Oyster Company
DAM WP

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Glidden Point Oyster Company applied to the Department of Marine Resources (DMR) to renew the aquaculture lease DAM WP for a period of 20 years. The 10.54-acre lease is issued for bottom culture of American/eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) and is located west of Prentiss Island, Damariscotta River in the Towns of Bristol and South Bristol.

The lease was originally granted to Barbara and Kevin Scully on May 25, 1993, for one 2.35 acre tract located in South Bristol. It was transferred to Glidden Point Oyster Company in 2002 and renewed for ten years in 2003. On January 11, 2006, a new lease was issued for the expansion of the site by the addition of two additional tracts covering 8.19 acres, for a total of 10.54 acres in three tracts.¹ The lease was most recently renewed on December 18, 2014, for a term of 10 years.

1. PROCEDURE

Notice of the 30-day public comment period and opportunity to request a public hearing was published in *The Lincoln County News* on May 11, 2023. Notice was also provided to riparian landowners within 1,000 feet of the site, the Towns of Bristol and South Bristol, federal and other state agencies and sent to subscribers of DMR's aquaculture email list-serve. A public hearing on a lease renewal is required if DMR receives five or more requests for a public hearing during the comment period. DMR did not receive any requests for a public hearing. Therefore, no public hearing was held on the renewal request.

¹ The lease site is one contiguous area, but it is divided into tracts which have specific conditions governing their use. See Figure 1 for a rendering of the site with tracts depicted.

2. STATUTORY CRITERIA

Aquaculture lease renewals are governed by 12 M.R.S.A §6072(12) and by Chapter 2.45 of 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 that there are no outstanding complaints regarding this lease. No ongoing compliance issues were noted in the lease inspection records and the lease is current with fees and bonding.

Therefore, the lease holder 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 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.

A questionnaire completed by the Bristol/South Bristol Harbormaster, dated June 6, 2023, indicates no known issues with navigation, riparian access, fishing, or use/enjoyment of publicly held lands. No other comments were received, and there is no information in the case file, to suggest the lease would conflict with new or existing uses of the area.

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

C. Aggregate Lease Holdings

According to DMR records, Glidden Point Oyster Company holds an aggregate total of 28.8 acres in leases, including this site.

Lease Acronym	Lease Acreage
DAM WP	10.54
DAM DL2	8.22
DAM JP	2.29
DAM JP2	7.75

Therefore, the renewal of this lease will not cause the 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 shellfish were cultivated during the previous lease term.²

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

3. LEASE CONDITIONS

The following conditions were applied to the lease by the original decision and subsequent addition of two tracts:

1. The lease area shall be marked in accordance with U.S. Coast Guard requirements and the Department of Marine Resources Regulations Chapter 2.80.

2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

The following conditions were applied only to Tracts 1 and 3:

² See page 1 of the renewal application.

3. The leaseholder shall accommodate one or more moorings within the lease area under the following circumstances: If a landowner, in consultation with the Harbormaster, exhausts all possible mooring locations outside the lease area, they may request that the leaseholder permit a mooring within the boundaries of the lease site. The mooring shall not scour more than a 20-foot radius with chain and scope and shall be placed in the area of the proposed lease determined by the leaseholder. The leaseholder shall be given ample notification as to the placement of the mooring in order to move product from the area. The leaseholder may refuse the placement of a mooring within the lease boundaries when the requirements set forth in this condition are not met or at such time when all suitable space for moorings within the lease is occupied.

4. No overnight mooring of the work platform is allowed within the lease boundaries with the exception of circumstances that inhibit the safe extraction at day's end. The work platform shall only be moored on the lease site when activities are occurring on the lease that require the use of the platform. It shall be towed from the lease area at the end of each day of use. If an emergency, inclement weather, or other unforeseen circumstances prohibit the ability to tow the platform from the site, it may remain on the lease site until such time as it may be safely moved.

The following conditions were applied only to Tract 2:

5. Riparian landowners are to be allowed floating docks over the site.
6. All harvesting of oysters shall be conducted by SCUBA and hand picking.

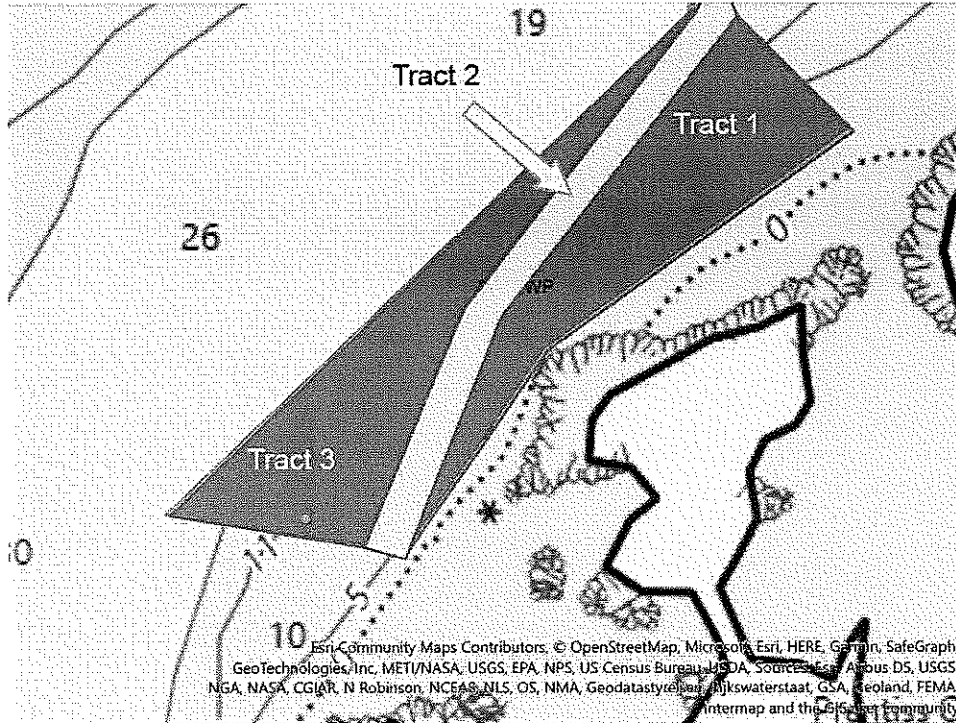


Figure 1: Lease Tracts. Image created by DMR staff.

Discussion:

In accordance with law and rule, DMR may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. While evaluating the renewal request, DMR reviewed the conditions that were originally placed on the lease when it was granted in 1993 and 2006. DMR has determined that some of the conditions need to be updated because the conditions are already contemplated in law or rule, the conditions contain redundancies, or the language is beyond the jurisdiction of a condition.

For example, condition #3 outlines a process the Harbormaster, lease holder, and riparian landowner(s) must follow regarding the placement of a mooring within the boundaries of the site. It also specifies what they need to consider regarding possible placement. Requiring stakeholders to follow such a process is beyond the scope of a condition and DMR does not have jurisdiction to require others to follow a certain process or dictate specific considerations. The updated language allows for the potential placement of a mooring(s) within the boundaries of the site, without mandating the process or considerations for the municipality or other stakeholders to follow.

Condition #4 originally stipulated that unless circumstances precluded safe removal, the work platform could not be moored overnight and only moored on site when lease activities were occurring. If the work platform cannot be moored overnight it is functionally limited to day use, so further stipulating that it can be only moored when activities are being conducted that require its use is redundant. Given the overnight stipulation, it is also highly unlikely the lease holder would haul the platform to the site unless they had the intention of using it for the day.

Condition #1 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, Condition #1 is removed from this decision and associated lease agreement as it is already contemplated in applicable regulation.

Condition #3 shall be updated to read: The leaseholder shall consider any reasonable proposal to accommodate the placement of a mooring(s), within the boundaries of the lease site, by a riparian owner(s) whose property boundaries are within 1,000 feet of the site.

Condition #4 shall be updated to read: No overnight mooring of the work platform is allowed within the lease boundaries except for circumstances that prevent the safe extraction at day's end.

4. DECISION


The Commissioner grants the application of Glidden Point Oyster Company to renew the aquaculture lease DAM WP 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 or subsequent DMR decisions.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §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: 8/17/2023 
Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Renewal Application
Bottom culture of shellfish, West of Prentiss Island,
Damariscotta River, Bristol and South Bristol,
Lincoln County

Glidden Point Oyster Company
DAM WP
Docket Number 2013-08-R
October 15, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Glidden Point Oyster Company applied to the Department on January 29, 2013 to renew the aquaculture lease, DAM WP for a period of ten years to May 23, 2023. The 5 acre lease is issued for suspended and bottom culture of American/ eastern oysters (*Crassostrea virginica*), and European oysters (*Ostrea edulis*) located west of Prentiss Island, in the Damariscotta River, and in Bristol and South Bristol, Lincoln County, Maine. The lease was originally granted on May 24, 2003 for one tract of 2.35 acres and a second lease was granted to include 2 additional tracts, for a total of 10.54 acres. The second lease was granted for the remainder of the current lease term.

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 March 21, 2013 and again on April 18, 2013. Notice was also published in the March 2013 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.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

The 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. 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 total lease acreage held by lessee, including this lease, DAM WP, consisting of 10.54 acres, will not exceed 1,000 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

Rule 2.60 provides that in considering whether a transfer 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 Transferor 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 are carried over from the original lease and will apply to the renewed lease for all three tracts:

- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80; and
- Navigation, lobster boat fishing, crab fishing, recreational boating and fishing shall be allowed in the open areas of the lease except when diving is being conducted.

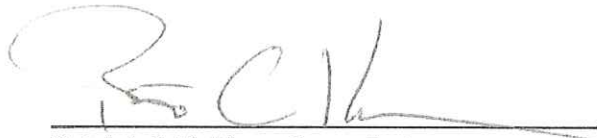
4. DECISION

The Commissioner of Marine Resources grants the application of Glidden Point Oyster Company to renew its aquaculture lease, DAM WP, for a period of ten years to May 23, 2023. 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 MRSA §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.

Dated: 10/15/2014


Patrick C. Keliher, Commissioner
Department of Marine Resources