

**STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES**

Suspended and bottom culture of shellfish,
Weskeag River, South Thomaston

**Weskeag River Shellfish Farms, LLC
WES UR**

July 31, 2020

**AQUACULTURE LEASE RENEWAL, LEASE WES UR
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Weskeag River Shellfish Farms, LLC, applied to the Department to renew the aquaculture lease WES UR for a period of 20 years to October 4, 2040. The 7.14-acre lease is issued for the suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*), located in the upper Weskeag River, South Thomaston, Knox County, Maine. This lease was initially issued on October 5, 2000.

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 *Courier Gazette* on March 5, 2020. Personal notice was given to the municipality, riparian landowners within 1,000 feet of the lease site and state agencies. A copy of the application was also provided to Marine Patrol because South Thomaston is not served by a harbormaster. Two comments were received on this application from members of the public during the comment period.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S. §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 indicates that all annual reports have been filed, and the site has passed inspection conducted by the Department. The rent is paid to date, and the bond is current. 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. Two public comments were received during the comment period, and these were shared with the leaseholder. Both comments raised concern about aquaculture gear breaking lose from the site and not being property cleaned up by the lease holder.¹ One of these commenters was also concerned about navigation within the river, as they felt there is very little room to access the upper part of the river and marsh because of the lease. In their review of the application for renewal, Marine Patrol indicated that the lease does not conflict with navigation or other uses of the area.² In addition, navigation by watercraft other than jet skis is allowed in the open areas of the lease. Based upon review of the file, there have not been other complaints about washed up gear or navigation issues surrounding the lease, and there are no outstanding complaints regarding navigation or other issues. As such, there is not substantial 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 lessee holds only lease WES UR (7.14 acres).

Therefore, I find that the renewal of this lease will not cause the lessee to lease more than 1,000 acres.

¹ Emails from R. Sleeper received on February 27, 2020 and from N. Levy on March 12, 2020.

² Harbormaster Questionnaire complete by Lt. Troy Dow, Marine Patrol, signed March 26, 2020

D. Speculative purposes

Chapter 2.45(2)(A) of the Department’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 previous lease term.” It is clear from annual reports filed with DMR by the lessee 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 were applied to the lease by the original decision:

1. Jet skis are prohibited within the lease boundaries.
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease.
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is permitted within the lease boundaries.
4. The lease area shall be marked in accordance with both U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

4. DECISION

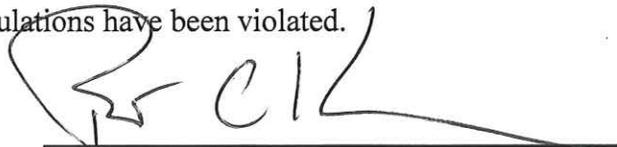
The Commissioner of Marine Resources grants the application of Weskeag River Shellfish Farms, LLC to renew aquaculture lease WES UR for a period of twenty years, to October 4, 2040. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 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.

Dated: _____

7/31/2020



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

STATE OF MAINE
 DEPARTMENT OF MARINE RESOURCES
 Renewal Application
 Suspended & bottom culture of shellfish
 Weskeag River, South Thomaston

Weskeag River Shellfish
 Farms, LLC
 Lease WES UR
 Docket #2010-12R
 January 5, 2011

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On June 23, 2010, the Department received an application from Weskeag River Shellfish Farms, LLC, to renew, for a period of ten years to October 4, 2020, its aquaculture lease for 7.14 acres for suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*) located in the upper Weskeag River, South Thomaston, Knox County, Maine. This lease was initially issued on October 5, 2000.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* August, 2010 edition and in the *Village Soup* newspaper on July 27 and August 12, 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 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

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 only the 7.14 acres covered by this 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. Jet skis are prohibited within the lease boundaries;
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease;
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is prohibited within the lease boundaries; and
4. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

B. Clarification of culture techniques

The original decision describes the culture techniques proposed by the leaseholder as including gear deployed at and beneath the surface and the possible free planting of shellfish on the bottom. The decision grants the lease for "suspended and bottom culture techniques as described in the record" (decision dated October 5, 2000, p. 12).

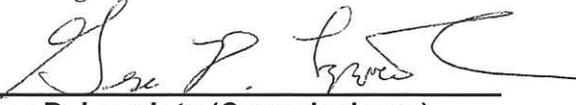
The original lease, however, refers instead to “suspended and bottom containment cultivation techniques”, which appears to be an error, as “bottom containment” is not reflected in the original decision. The term “bottom containment” is no longer used; it was intended to refer to the use of gear placed on the bottom, as opposed to at the surface or higher in the water column.

“Bottom culture”, as recognized by this Department, means planting shellfish directly on the bottom, without the use of gear other than marker buoys. “Suspended culture” means the use of gear, whether at or below the surface or on the bottom. Therefore, this lease will be modified upon renewal to read “suspended and bottom culture”, 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 Weskeag River Shellfish Farms, LLC, to renew its aquaculture lease for 7.14 acres for suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*) located in the upper Weskeag River, South Thomaston, Knox County, Maine for a period of ten years, to October 4, 2020. With the exception of the changes described above, the renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: 5 January 2011



George D. Lapointe (Commissioner)
Department of Marine Resources